

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte Bradford

Appeal No. _____
Application No. 10/629,726

REPLY BRIEF

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Judson A. Bradford Art Unit: 3781
Serial No.: 10/629,726 Examiner: Harry A. Grosso
Filed: July 29, 2003 Atty. Docket No.: BRP-200
For: COMBINATION OF PARTITION ASSEMBLY AND CONTAINER AND
METHOD OF USE

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Commissioner for Patents
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REPLY BRIEF**I. REJECTION OF CLAIMS 1-3, 6-10, 12, 21, 23, 26-28, 31, & 33 UNDER 35 U.S.C. § 103(a)**

Claims 1-3, 6-10, 12, 21, 23, 26-28, 31, and 33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,403,638 (hereinafter *Baum*) in view of U.S. Patent No. 5,069,514 (hereinafter *Sherman*).

A. *Baum* Does Not Disclose Or Suggest A “Partition Assembly”

Independent claim 1 recites that the claimed combination has, inter alia, “a partition assembly including intersecting slotted partitions arranged in a matrix.” (Emphasis added.)

Independent claim 10 recites that the claimed combination has, inter alia, “a partition assembly for dividing space inside [a] container.” (Emphasis added.) Independent claim 12 recites that the claimed combination has, inter alia, “a partition assembly for insertion into said container.”

(Emphasis added.) Independent claim 21 recites that the claimed combination has, inter alia, “a partition assembly including slotted partitions arranged in a matrix.” (Emphasis added.)

Independent claim 28 recites that the claimed combination has, inter alia, “a partition assembly for dividing the interior of the container.” (Emphasis added.) Finally, independent claim 33 recites that the claimed combination has, inter alia, “a partition assembly.” (Emphasis added.)

The Examiner contends that *Baum* discloses “[a] partition assembly including partitions.” (Examiner’s Answer at 4.) According to this Examiner, because “Baum discloses a series of partitions as shown in Fig. 4,” it “thereby disclos[es] a partition assembly. (Examiners Answer at 9.) Not so.

Baum discloses two partitions or more precisely, “[p]artition wall members 34, 35.” (*Baum*, col. 3, ll. 25-26.) Only two partitions wall members are shown in Fig. 4 of *Baum*, and therefore *Baum* would be more accurately described as disclosing a plurality of partitions, not a “series of partitions.” In other words, there is nothing that particularly associates these two independent partitions wall members 34, 35 with one another that would allow them to be accurately be described as being in a “series.” Moreover, having a plurality of partitions does not automatically make a partition assembly. “Dictionaries or comparable sources are often useful to assist in understanding the commonly understood meaning of words and have been used . . . in claim interpretation,” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1322 (Fed. Cir. 2005) (*en banc*), *cert. denied*, 126 S. Ct. 1332 (2006), and here they commonly define an “assembly” as:

- “a group of machine parts, esp. one forming a self-contained, independently mounted unit”¹

¹DICTIONARY.COM UNABRIDGED (v. 1.1) based on the RANDOM HOUSE UNABRIDGED DICTIONARY (2006).

- “[a] set of parts so assembled,” i.e., a set of parts “put[] together . . . to make a completed product, such as a machine or electronic circuit”²
- “a group of machine parts that fit together to form a self-contained unit”³
- “a unit consisting of components that have been fitted together.”⁴

In other words, an “assembly” is not a bunch of parts, but rather a bunch of parts that have been assembled together. However, the partition wall members 34, 35 in *Baum* do not form a self-contained, independently mounted unit, nor are they assembled together to make a completed product, nor can they be said to make up a unit consisting of components that have been fitted together. In short, the two unassembled, unconnected, and unattached partition wall members 34, 35 in *Baum* do not disclose the recited “partition assembly.”

B. *Baum* Does Not Disclose Walls That Extend From A Bottom That Define An Interior Of A Container

Independent claim 1 recites that the claimed combination has, inter alia, “a container having walls extending upwardly from a bottom, said bottom and said walls of said container defining an interior of said container.” (Emphasis added.) Independent claim 12 recites that the claimed combination has, inter alia, a “container having walls extending upwardly from a bottom, said bottom and walls defining an interior of said container.” (Emphasis added.)

²THE AMERICAN HERITAGE OF THE ENGLISH LANGUAGE (4th ed. 2006) (published by Houghton Mifflin Company)

³WORDNET 3.0 (2006) (published by Princeton University)

⁴*Id.*

Independent claim 21 recites that the claimed combination has, inter alia, “a container having walls extending upwardly from a bottom, said bottom and said walls of said container defining an interior of said container.” (Emphasis added.) Independent claim 28 recites that the claimed combination has, inter alia, “a container having walls extending upwardly from a bottom, said bottom and side walls defining an interior of the container.” (Emphasis added.) Finally, independent claim 33 recites that the claimed combination has, inter alia, “a container having walls extending upwardly from a bottom, said bottom and side walls defining an interior of the container.” (Emphasis added.)

The Examiner contends that *Baum* discloses “[a] container having walls extending upwardly from a bottom, defining an interior of a container (Fig. 4, item 23).” (Examiner’s Answer at 4.) Not so.

Baum only discloses two side walls 25, 26 that when erected, extend upwardly from a bottom wall 24. (*Baum*, col. 2, ll. 60-63; Figs. 4 & 6.) As shown in Figs. 4 & 6 of *Baum*, end walls 27, 28 do not extend from bottom wall 24 but rather from side wall 26, and not in an upwardly direction either. Thus, *Baum* only discloses two wall 25, 26 that extend from a bottom wall 24, but these three walls do not define the interior of a container. Rather, even when erected, there are still three sides that are open, exposed, or otherwise undefined.

C. *Baum* Does Not Disclose Partitions That Do Not Bend When Inserted

Independent claim 1 recites that the claimed combination has, inter alia, “partitions being of a length such that said partition assembly may fit in said interior of said container without bending said partitions.”

The Examiner contends that *Baum* discloses “[p]artitions being of length such that they do not bend when inserted (Fig. 4).” (Examiner’s Answer at 4.) Not so.

The partition walls disclosed in *Baum* are flexible. More specifically, *Baum* discloses “[p]artition wall members 34, 35 [that] are preferably fabricated of the same materials as those of the container portion 23, so as to be somewhat flexible” (*Baum*, col. 3, ll. 25-28) (emphasis added).

D. *Baum* Does Not Disclose A Hook And Loop Fastener Having A First Component Secured To The Container Walls

Claim 2 recites, inter alia, that the “hook and loop fastener comprises a first component secured to an inner surface of one of said container walls and a second component secured to one of said partitions.” (Emphasis added.)

The Examiner contends that “*Baum* discloses the hook and loop fastener having a first component secured to the container walls (Fig. 4, the inner wall fabric), and a second component secured to a partition, as shown in Fig. 4, item 32.” (Examiner’s Answer at 5.) In other words, according to the Examiner, the hook and loop fastener in *Baum* is comprised of the inner wall fabric and a VELCRO hook or burr strip 32. However, the VELCRO hook or burr strip 32 is not even attached to the partitions. (*Baum*, Figs. 4 & 6.) Additionally, as shown in Fig. 7 of *Baum*, the fabric coverings 30, 31 are actually part of the walls of the container. In other words, because the fabric is part of the walls of the container, it cannot also be the component that is secured to an inner surface of one of the container walls. It is the inner surface. In short, *Baum* does not disclose the recited “first component” of the hook and loop fastener.

E. Baum Does Not Disclose A Flexible Extension Of The Partition

Claim 6 recites, inter alia, that the “second component of said hook and loop fastener functions as a flexible extension of said one of said partitions.” (Emphasis added.)

The Examiner contends that “Baum discloses the second component functioning as a flexible extension of the partition, as shown in Fig. 4 wherein the partitions clearly extend beyond the partition.” (Examiner’s Answer at 5.)

First, the Examiner’s argument, on its face, is illogical. Fig. 4 does not show, that “partitions clearly extend beyond the partition.” *Id.* Moreover, as discussed, to the extent the Examiner was intending to refer to item 32, this strip is not attached to the partitions. Nor does this strip function as an extension of the top wall or closure flap 29. The most that can be said is that strips 32, 33 extend from the flap 29, but not that they are an extension of that flap. Similarly, VELCRO hook or burr strips 36, 37, 38 and 39, which are used to releasably secure the partition wall members 34, 35 are not extensions of those wall members but rather merely extends perpendicularly from those partitions. And even if the portion of these strips that is sewn to the ends of the partitions was considered an extension of that partition, it is sewn in place and thus is certainly not a flexible extension.

F. The Equated “Second Component” In Baum Does Not Disclose A Plurality Of Loops

Claims 7 and 27 recite, inter alia, that the “second component of said hook and loop fastener has an exterior surface which has a plurality of loops.” (Emphasis added.)

The Examiner contends that “Baum discloses the second component having an exterior surface with a plurality of loops, as shown in Fig. 4, item 32.” (Examiner’s Answer at 5; *see also* Examiner’s Answer at 8.)

First, as discussed and is clearly shown in Fig. 4 of *Baum*, item 32 is not attached to the partitions. Second, item 32, as well as items 33, 36, 37, 38, and 39, are “VELCRO hook or burr strips.” (*Baum*, col. 3, ll.12 & 35-36.) In other words, none of these strips have the recited “loops.”

G. Baum Does Not Disclose A Plurality of First Partitions And A Plurality Of Second Partitions

Independent claims 10, 12 and 33 all recite, inter alia, that the partition assembly comprises “a plurality of first slotted partitions” and “a plurality of second slotted partitions.” The Examiner contends that *Baum* discloses “[a] plurality of first partitions” and “a plurality of second partitions.” (Examiner’s Answer at 5 & 6.) However, all that *Baum* discloses is “a plurality of separable partition wall members 34, 35 (only two illustrated and described herein by way of example).” (*Baum*, col. 3, ll. 20-22.) To have two sets of pluralities, at least four items must be shown or described. Nor does *Baum* provide any suggestion that even if at least four wall members were implied, that these wall members would properly be classified or identified as being grouped into a first set and a second set.

H. Baum Does Not Disclose A Tab That May Be Bent To Either Side Of A Slotted Partition To Engage The First Component Of The Two Part Hook And Loop Fastener

Independent claim 10 recites, inter alia, that the “tab may be bent to either side of said one of said slotted partitions to engage said first component of said two part hook and loop

fastener.” (Emphasis added.) Independent claim 12 recites, inter alia, that there is a “flexible tab comprising a second component of said two part hook and loop fastener for engagement with said first component of said two part hook and loop fastener on either side of said one of said slotted partitions.” (Emphasis added.) Finally, independent claim 21 recites, inter alia, that the second flexible component is “being adapted to bend both clockwise and counterclockwise relative to said one of said partitions.”

The Examiner contends that *Baum* discloses that one of the partitions has “a flexible tab at the end thereof, said flexible tab comprising a second component of a hook and loop fastener (32), . . . whereby the tab can be bent to either side of said partition to engage said first component, wherein the tab 32 can clearly bent to either side, thereby engaging the first component of the hook and loop fastener.” (Examiner’s Answer at 5; *see also* Examiner’s Answer at 6 & 7.)

As a threshold matter, again it must be noted that item 32 is not attached to either of the partition wall members 34, 35 disclosed in *Baum*. (See *Baum*, Fig. 4.) Second, as shown in Figs. 3, 4, and 6 of *Baum*, all of the VELCRO hook or burr strips, 32, 33, 36, 37, 38, and 39, only have the hooks on one side. Thus they cannot be bent to either side or clockwise and counterclockwise and still engage the other component of the hook and loop fastener on either side of the partition. For example, if any of the strips 36, 37, 38, and 39 that are attached to the partition wall members 34, 35 where bent or folded over they would not only not have any hooks exposed for attaching the partition, but they would actually substantially cover the hooks on the opposite end of the strip that are exposed for engagement and attachment.

I. Item 32 In *Baum* Is Not A Planar Extension Of The Partition

Claim 26 recites, inter alia, that the “second component of said hook and loop fastener functions as a generally planar extension of said one of said partitions.” The Examiner contends that “Baum discloses the second component being a planar extension of the partition, wherein since the portion of the tab 32 that extends over the edge of the partition, it acts as a planar extension that extends outwardly.” (Examiner’s Answer at 7.) Again, item 32 is not attached to either partition wall members 34, 35 disclosed in *Baum*. (See Fig. 4.) Nor does the portion of strips 36, 37, 38, or 39, that are attached to the edges of wall members 34, 35 function as an extension of those partitions. The most that can be said is that they extend from those edges, not that they function as an extension of the entire partition.

In sum, because numerous of the recited claim elements are not taught or suggested in the references relied upon by the Examiner, the Board should reverse the Examiner’s rejection of claims 1-3, 6-10, 12, 21, 23, 26-28, 31 and 33.

II. REJECTION OF CLAIMS 4, 5, 9, 11, 13, 22, 24, 25 AND 29 UNDER 35 U.S.C. § 103(a)

Claims 4, 5, 9, 11, 13, 22, 24, 25 and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Baum* in view of *Sherman* as applied to claim 1, and in further view of U.S. Patent No. 4,610,286 (hereinafter *Cyr*).

A. Adhesively Securing The Second Component In Baum Would Be Problematic

Claims 4, 5, 24, and 25 recite, inter alia, that the second component is “adhesively secured to said one of said partitions” or that it is “adhesively secured to opposite side surfaces of said one of said partitions.” The Examiner relies on *Cyr* for the teaching of securing an item “via adhesives.” (Examiner’s Answer at 8.)

However, unlike the attachment of the strips 71 in *Cyr*, in *Baum*, there is very little surface area on the edge of the partition wall members 34, 35 to which a strips 36, 37, 38, and 39 could be adhesively secured. Likewise, strips 36, 37, 38, and 39 make very little contact with the sides of the partition wall members 34, 35, again making an adhesive attachment unlikely. Finally, it is not as though *Baum* is silent as to how strips 36, 37, 38, and 39 are attached. As disclosed in *Baum*, “the longitudinal edges of the partition wall members 34, 35 have sewn thereto, in spaced relation along each side, VELCRO hook or burr strips 36, 37, 38 and 39.” (*Baum*, col. 3, ll. 33-36.) Thus, because the use of adhesives to secure or attach something was clearly known at the time of *Baum* and because it was not specified as an alternative means of attachment, but rather sewing was explicitly disclosed, there is simply no motivation to combine these references.

III. REJECTION OF CLAIMS 30 AND 32 UNDER 35 U.S.C. § 103(a)

Claims 30 and 32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Baum* in view of *Sherman* as applied to claim 1, and in further view of U.S. Patent No. 6,535,606 (hereinafter *Cox*).

Claim 30 recites, inter alia, that the “second component of said two part hook and loop fastener has a removable backing covering an adhesive surface, said adhesive surface adapted to attach to said ends of said slotted partitions.” Claim 32 recites, inter alia, that the “one component of a two part hook and loop fastener has a removable backing covering an adhesive surface, said adhesive surface being secured to an inner surface of one of said walls of said container.”

The Examiner relies on Cox for the disclosure of “hook and loop fasteners with a release backing configuration.” (Examiner’s Answer at 9.) However, with regard to claim 30, for the reasons discussed herein, the use of an adhesive to attach the strips 36, 37, 38, and 39 to the partition wall members 34, 35 of *Baum* would not likely be a workable alternative. With regard to claim 32, the Examiner has equated the fabric covering layers 30, 31 of *Baum* with the “said one component of a two part hook and loop fastener.” However, this as shown in Fig. 7 of *Baum*, is sewn together. (*Baum*, col. 2, ll. 66-67.) Having a “removable backing covering” on these fabric layers would simply not be workable.

IV. CONCLUSION

In conclusion, for the reasons discussed herein and in its Appeal Brief, Applicants respectfully request that the Board reverse the Examiner's rejections of claims 1-13 and 21-33 and that the application be passed to issue. If there are any questions regarding the foregoing,

please contact the undersigned at 513-241-2324. Moreover, if any other charges or credits are necessary to complete this communication, please apply them to Deposit Account 23-3000.

Respectfully submitted,

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